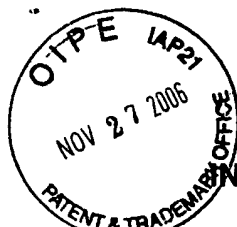


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Garman	
Application No.: 10/720,769	Art Unit: 1761
Filed: 11/24/2003	Examiner: Reginald Alexander
Title: HOT BEVERAGE MAKER WITH CUP-ACTUATED LOW DRIP DISPENSER	
Attorney Docket No.: HAMBE 135	

Commissioner of Patents
P.O. Box 1450
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Appellant's Brief

Appellant Hamilton Beach/Proctor-Silex, Inc. Submits this Revised Appellant's Brief following Notification of Non-Compliant Appeal Brief mailed November 11, 2006. Elements 4, 6 and 7 have been revised as requested.

(i) Real Party in Interest

Hamilton Beach/ Proctor-Silex, Inc.

(ii) Related Appeals and Interferences

There are no related appeals or interferences.

(iii) Status of Claims

All of pending claims 1-11 are presently rejected. All of claims 1-11 are appealed herein.

(iv) Status of Amendments

None.

(v) Summary of Claimed Subject Matter

The present invention relates to a convenient hot beverage maker having a cup actuated dispenser that includes a low-drip, actuator mechanism for reducing or preventing excess drippage of brewed beverage after the dispenser shut off valve shuts off flow from the reservoir. Additionally, the hot beverage maker includes a removable brewed beverage tank.

Claim 1

Claim 1 is directed in part to a hot beverage maker that includes a brewed beverage tank removably mounted on a stand and not permanently fastened to the stand. As is evident from the drawings of the present application, for instance Figure 7, the brewed beverage tank 113 is removable in the ordinary use of the coffee maker. For instance, in Figure 2 the brewed beverage tank 13 is shown mounted in place on the hot beverage maker 10. It is this routine, intended purpose of removability that is the basis for the claim language in claim 1 that reads "wherein the brewed beverage tank is removably mounted on the stand and is not permanently fastened to the stand." It is at least this specific feature that Applicant believes is nowhere found in the prior art.

Claims 1 and 7

Independent Claims 1 and 7 are also directed to a unique dispenser actuator. As noted in the Background of the present application, drippage from brewed beverage makers may be a nuisance or potential problem. In order to reduce the drippage after a dispenser shut off valve shuts off flow from a reservoir, the unique shape of a portion of a plug is incorporated into the brewed beverage maker. Specifically, the inverted conical shape of the end of a stem portion of the plug 155 is shown in multiple views in Figures 8 and 9 of the present application. The bottom of the stem 155 incorporates the substantially inverted conical shape. It is believed that this distinctive shape creates less drippage, because less surface area on that portion of the plug makes it less conducive to holding excess beverage and creates a more laminar flow across the bottom of the stem. The benefit to the consumer is self evident in reducing the need for cleanup after use.

Map of Claim Limitations to the Specification

Turning now to the specific language of Claims 1 and 7, Applicant shall note herein portions of the specification that describe all of the limitations of Claim 1 and Claim 7. The support noted herein is not comprehensive, because one of skill in the art may read the application and study the drawings and understand additional support that is in addition to the support noted herein.

Claim 1 reads as follows:

1. A hot beverage maker comprising a stand and a brewed beverage tank wherein the brewed beverage tank comprises:
a filter basket mounted inside the tank and in the top thereof;
a reservoir portion of the tank under the filter basket;
and
an outlet port positioned substantially at the bottom of the tank;
a dispenser actuator connected to the outlet port and biased to a closed position, the dispenser actuator comprising a plug, and the plug comprising a stem and a seal ring, where the bottom of the stem has a substantially inverted conical shape;
wherein the brewed beverage tank is removably mounted on the stand and is not permanently fastened to the stand.

Referring now to the specific limitations found in claim 1, the support for the limitations is found in the specification at least in the following:

A hot beverage maker comprising a stand and a brewed beverage tank wherein the brewed beverage tank comprises...

The brewed beverage tank is referred to as component 13 in Figures 1-4. The brewed beverage tank is discussed at Page 6, Lines 11-17 and Page 8, Line 15 to Page 9, Line 3. The brewed beverage tank is also referred to as component 113 in Figure 7. Component 113 is discussed on Page 10, Line 7 to Page 11, Line 3.

"a filter basket mounted inside the tank and in the top thereof"...

The filter basket is described as component 40 in Figures 2 and 4. It is discussed at Page 8, Lines 15-20. The filter basket is also referred to as component 140 in Figure 7. The filter basket is discussed on Page 10, Lines 13-14.

“an outlet port positioned substantially at the bottom of the tank”...

The outlet port is referred to as component 70 in Figures 4, 5 and 6. The outlet port is discussed at Page 8, Line 17 to Page 9, Line 3. It is further discussed at Page 9, Line 17 and Page 9, Line 21 to Page 10, Line 5. The outlet port is also referred to as component 180 in connection with Figures 10 and 11. That component is discussed at Page 12, Lines 3-11.

“a dispenser actuator connected to the outlet port and biased to a closed position, the dispenser actuator comprising a plug, and the plug comprising a stem and a seal ring, wherein the bottom of the stem has a substantially inverted conical shape”...

The dispenser and actuator plug is discussed in detail in connection with Figures 8-11. The discussion of the actuator and the plug and the specific shape of the plug is found at Page 11, Line 9 to Page 12, Line 20.

“wherein the brewed beverage tank is removably mounted on the stand and is not permanently fastened to the stand.”

The removably mounted brewed beverage tank is displayed in Figures 2, 3, 4 and 7. The brewed beverage tank and its removable nature is shown in those figures and is further discussed at Page 3, Lines 14-15; Page 4, Line 6-7; and Page 7, Lines 3-

5, 11-20. *The removable feature of the brewed beverage tank is also noted in connection with Figure 7 at Page 10, Line 12 to Page 11, Line 3.*

Turning now to Claim 7, the only other independent claim that is currently pending, that claim reads as follows:

7. A dispenser actuator for a hot beverage maker, the actuator comprising a plug adapted to releasably close an outlet port of a hot beverage maker,
the plug comprising a stem and a seal ring, wherein the bottom of the stem has a substantially inverted conical shape.

The outlet port is discussed as component 70 in Figures 4, 5, and 6. The component 70 is discussed at Page 8, Line 17 to Page 9, Line 3; Page 9, Line 17; and Page 9, Line 21 to Page 10, Line 5. The outlet port is discussed as component 180 in Figures 10 and 11. The discussion regarding component 180 is found at Page 12, Lines 3-11. The specific disclosure with respect to the dispenser actuator and plug, including plug shape, is set forth in Figures 8-11 and discussed at Page 11, Line 9 to Page 12, Line 20.

As noted earlier, the foregoing references to portions of the specification, including the drawings, are not comprehensive. One of skill in the art will understand the full disclosure of the claimed invention from the application as a whole.

(vi) Grounds of Rejection to be Reviewed on Appeal

1. *Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weidman et al. (5,560,284) in view of Lee (5,857,596).*

According to the Examiner, there is disclosed in Weidman a hot beverage maker comprising: a stand 11; a removable brewed beverage tank 28; a filter basket 18 mounted inside of the tank; a reservoir portion (lower portion) of the tank; an outlet port 29 positioned substantially at the bottom of the tank; a dispenser actuator 17 connected to the outlet port; a warmer plate 71; a fresh water chamber 14; and a hot water shower head 50 connected via tube 48 to the water chamber.

Still further according to the Examiner, Lee discloses a push button dispenser actuator including a plug 350 comprising a stem 362 and a seal ring 358 wherein the lower portion of the stem has a substantially inverted conical shape.

It is alleged that it would have been obvious to one skilled in the art to substitute the dispenser and actuator arrangement of Weidman with that disclosed in Lee, in order to provide an alternative means for dispensing liquid from the brewed beverage tank.

(vii) Argument

Applicant believes that there are fundamental disagreements between Applicant and the Examiner with respect to factual issues in the matter. First, Applicant believes that Weidman nowhere discloses a removably mounted brewed beverage tank. The apparent source of disagreement with respect to this issue seems to be based on the definition of “removable” in the claims. Further, however, Applicant submits that there is a failure of disclosure in the cited Lee reference of the claimed dispenser actuator shape. Additionally, Applicant believes that the combination of Weidman and Lee is not

supported. For one or more of the following reasons, Applicant believes that all of the claims are in condition for allowance. Favorable action is hereby requested.

*1. Claims 1-11 are rejected under 35 U.S.C. 103(a)
as being unpatentable over Weidman et al. (5,560,284) in
view of Lee (5,857,596).*

- a. Claims 1-6 are allowable over the combination of Weidman and Lee, because Weidman does not disclose a removable brewed beverage tank.**

The hot beverage maker in claim 1 of the present application includes a brewed beverage tank that is “removably mounted on the stand and is not permanently fastened to the stand.” Applicant submits that this is as clear and as explicit as can be articulated. On the other hand, the Weidman urn explicitly includes “a brewed beverage reservoir which is integrally attached to and partially surrounded by the liquid reservoir.” (Col. 1, line 55-56, emphasis added). Respectfully, the fact that Weidman does not disclose removability and actually teaches otherwise is an inherent flaw in the rejections that is not reasonably supported.

In order to make the rejection set forth in the Office Action, the Examiner has stated that the brewed beverage reservoir 16 (or liner 28) of Weidman is removable from the base 11. Applicant respectfully submits that both practically and as a matter of law, the reservoir 16 of Weidman is not “removable” from its base 11. Applicant has carefully studied the Weidman reference and finds no disclosure or teaching of removability other than of the filter basket 18 from the reservoir 16. Instead, there is reference to the “integral” construction of the brewed beverage reservoir 16 within the

apparatus 10. (Column 1, Lines 51-64). The lifting handles 108 of the apparatus of Weidman are disclosed as allowing the “entire brewing apparatus to be gripped for lifting.” (Column 2, Line 65 - Column 3, Line 1). There is nothing disclosed nor suggested that the urn of Weidman is anything other than a single, integral unit where the filter basket is the only removable item.

The “removable” claim limitation in claim 1 does not reasonably include disassembly of a hot beverage maker. Applicant has carefully studied the Weidman reference and has determined that the reservoir 16 (or liner 28) cannot be removed from the urn unit as a whole without a user going through at least eight disassembling steps, none of which are disclosed or taught by Weidman. The steps include the following:

1. At the top of the Weidman device, detach the exterior perimeter wall 24 from the reservoir 16;
2. At the top, detach the interior wall 25 from the reservoir 16;
3. At the bottom, detach the faucet 17 from the reservoir 16;
4. Unscrew the fasteners shown in stilts 36a, which requires that a user do the following;
5. Remove the bottom plate of the apparatus;
6. Remove the heated pipe section 44 and possibly other hot water hardware, insulation and thermostats;
7. The keep warm heating element 71 must be removed from the bottom wall 36 of the reservoir 16; and

8. Remove the four fasteners 74 that secure the element 71 to the bottom of the reservoir 16.

It is certainly possible that there would be multiple additional steps required. At the end of this process of removing the reservoir from the apparatus, there is nothing remaining but a collection of dysfunctional parts. Certainly the base 11 and housing 12 are not functional because they are now in several different pieces that may or may not be able to be reattached. The reservoir 16 would not be able to hold water nor have any other function independent of the base 11 and housing 12.

A recent United States Court of Appeals for the Federal Circuit decision is very helpful with respect to the legal definition and the practical nature of the term “removable.” In the recent decision, that Court was deciding whether a baby seat was removable from a base that could hold the seat. In that case, the Federal Circuit specifically defines the “removable” limitation as follows: “The seat and base can be separated in a manner that contemplates that the seat may be removed from the base such that the seat remains functional.” Dorel Juvenile Group, Inc. v. Graco Children’s Products, Inc., 429 F.3d 1043, 1046 (Fed. Cir. 2005) (emphasis added). In that case, therefore, the Federal Circuit found that in order for the seat to be removable from the base, at least the seat must remain functional after they are separated.

Applying the foregoing teachings to the present case, Applicant submits that Weidman does not teach or disclose a removable brewed beverage tank as claimed. Once the Weidman reservoir 16 is disassembled from its base 11, there is a substantial hole where the faucet 17 was previously secured to the reservoir 16. Therefore, the

component 16 previously functional as a reservoir, is no longer able to hold water. The disassembled component 16 is no longer a functional reservoir.

Additionally, the claimed brewed beverage tank includes both a reservoir portion and a dispenser actuator at all times. The disassembled component 16 contains neither. Assuming that the product identified in Weidman were capable of being disassembled as described above, the element identified as reservoir 16 is thoroughly incapable of functioning as a reservoir. Furthermore, if the Weidman device were disassembled, the dispenser actuator (faucet 17) would necessarily have been separated from everything. Therefore, based on the language of the claims, the direction of the Federal Circuit in Dorel, and a careful reading of the Weidman reference, Applicant respectfully submits that Weidman does not teach a brewed beverage tank removably mounted on the stand that is not permanently fastened to the stand, as is required by the claim language.

b. Claims 1-11 are allowable over Weidman and Lee, because Lee does not disclose the claimed dispenser actuator.

The Examiner has noted that Weidman does not disclose the specific dispenser actuator structure as claimed. Therefore, the Examiner has combined Weidman with Lee to arrive at the rejection. However, Lee does not show any structure that could be argued to be similar to the claimed stem bottom that has an inverted conical shape. Applicant has carefully studied Figure 4 of Lee and the valve rod 362 that the Examiner has referred to as a stem. The rod 362 has a flat bottom not an inverted conical shape as is required in the pending claims.

Applicant has also carefully studied all of the figures in the disclosure of Lee and does not see any comparable part or component that could be characterized as a stem having a lower portion with a substantially inverted conical shape. If any component appears conical in shape in Lee is it the packing member 358. But the packing member 358 corresponds, if at all, to the seal ring of the present invention, and further the packing member is part of the upper portion of the valve rod 362. The packing member 358 is not “the bottom of the stem” as claimed in claim 7.

- c. Claims 1-6 are allowable, because the combination of Weidman and Lee is incompatible and unsupported on the face of those references.**

Finally, Applicant respectfully submits that a combination of Lee and Weidman is not supported. The outlet of Lee is positioned under the water reservoir in that reference. The faucet of Weidman sticks out the side of the apparatus in that reference. The basic construction of the respective references is incompatible. It is not apparent how the mechanism of Lee could be adapted, if at all, to the structure of Weidman. All of the electronics and support structure would have to be completely overhauled to make the Weidman urn have a bottom type dispenser like Lee. There is no disclosure in either reference that the dispenser or actuator is faulty or requires modification. Applicant respectfully submits that the combination of the isolated component in Lee with the Weidman urn is necessarily based on hindsight and is therefore not appropriate.

For any one or more of the foregoing reasons, Applicant submits that the application claims 1-11 are in condition for allowance. Favorable action is requested hereon.

Respectfully Submitted,



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Date: November 22, 2006

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(viii) Claims Appendix

1. A hot beverage maker comprising a stand and a brewed beverage tank wherein the brewed beverage tank comprises:
 - a filter basket mounted inside the tank and in the top thereof;
 - a reservoir portion of the tank under the filter basket ; and
 - an outlet port positioned substantially at the bottom of the tank;
 - a dispenser actuator connected to the outlet port and biased to a closed position, the dispenser actuator comprising a plug, and the plug comprising a stem and a seal ring, wherein the bottom of the stem has a substantially inverted conical shape;wherein the brewed beverage tank is removably mounted on the stand and is not permanently fastened to the stand.
2. A hot beverage maker as described in claim 1, wherein the dispenser actuator comprises a push-button positioned in the stand below the brewed beverage tank.
3. A hot beverage maker as described in claim 2, wherein the dispenser actuator further comprises a linkage connecting the push-button to the outlet port.
4. A hot beverage maker as described in claim 1, further comprising a warmer plate positioned in the stand, wherein the brewed beverage tank is adapted to be removably mounted on the warmer plate.

5. A hot beverage maker as described in claim 1, further comprising a fresh water chamber and an automatic drip mechanism for making the brewed beverage, the automatic drip mechanism comprising a hot water showerhead disposed above the filter basket and connected via a tube to the fresh water reservoir, wherein the showerhead is adapted to dispense water into the filter basket and brewed liquid drips from the filter basket into the reservoir portion of the tank.

6. A hot beverage maker as described in claim 1, wherein the filter basket has a depth less than the depth of the tank.

7. A dispenser actuator for a hot beverage maker, the actuator comprising a plug adapted to releasably close an outlet port of a hot beverage maker,
the plug comprising a stem and a seal ring, wherein the bottom of the stem has a substantially inverted conical shape.

8. A dispenser actuator as described in claim 7, further comprising a lever arm, with the plug mounted on one end of the lever arm.

9. A dispenser actuator as described in claim 7, further comprising a push-button adapted to be positioned in a hot beverage maker stand below the outlet port.

10. A dispenser actuator as described in claim 7, further comprising a linkage connecting the push-button to the plug.

11. A dispenser actuator as described in claim 7, wherein the stem and seal ring are two different components, and the seal ring is mounted on the stem.

(ix) Evidence Appendix.

None

(x) Related Proceedings

None



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the appropriate address at the U.S. Patent and Trademark Office required under 37 CFR §1.1(a) on November 22, 2006.

By:


John H. Thomas